

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

UNITED STATES OF AMERICA

*

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V.

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WA:16-CR-143 RP

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HAROLD ARCHIE LINDSAY III

*

DEFENDANT'S ADVISORY RE: NOTICE OF APPEAL

In response to the Court's order requesting an explanation of why the notice of appeal was filed late, counsel for Mr. Lindsay states the following:

On December 20, 2016, I received an email stating simply that trial counsel had been terminated and I had been appointed. The email did not say what I had been appointed to do, nor did the docket sheet say anything about an appeal. I have received similar emails in the past when a lawyer has been terminated and I have been appointed but for the purposes of completing the representation in the district court. When that happens, I usually receive a subsequent email advising me of other court dates. I received this email shortly before the Christmas holidays and I was in the office very little during that time. When I came back to the office the following week, I could not find the email; I could not remember the client's name so I could not look up a docket sheet; and I did not receive any other emails about this case. As it turns out, I ultimately found the email in a yahoo folder marked "archived". I had looked in my inbox and trash folders with no luck. I did not even know at the time what an "archived" file was. However, when I found the email, I called trial counsel to ask what I had been appointed to do, since there was nothing on the docket sheet about an appeal and no notice of appeal had been filed. He explained that it was for an appeal and that he had not filed a notice of appeal, assuming that either the Court or I would do so. Once I realized it was for an appeal, and that trial counsel had not filed a notice of appeal on behalf of the client before

withdrawing, I immediately did so.

In my own cases, I file a notice of appeal on behalf of the client before withdrawing to ensure that the client's rights are protected. In the past, from other appeals that I have done, it is my recollection that Judge Smith would direct the district clerk's office to file a notice of appeal for the client. Perhaps this was the assumption that trial counsel was operating under. In any event, no notice of appeal was filed for the client; I did not realize I was appointed for an appeal until January 4, after the Christmas holidays; trial counsel did not contact me to tell me I was appointed on an appeal and needed to file a notice of appeal; and I immediately filed a notice of appeal. I have attached a copy of the email I received. I have also included an email that I sent to the court reporter dated January 4. In hindsight, I believe I did not even realize that no notice of appeal had been filed for the client until after I emailed the court reporter.

In sum, I believe that partly because of the holidays, partly because of the lack of communication, and partly because of the ambiguity of the appointment email, the notice of appeal was filed on January 4. I filed the notice as soon as I realized one had not previously been filed. I ask the Court to find excusable neglect and/or good cause and order the notice of appeal be accepted.

Respectfully submitted,

/S/ John Donahue
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was forwarded to the Assistant United States Attorney, on this 21st day of April, 2017.

/s/ John Donahue
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U.S. District Court [LIVE]
Western District of Texas

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Docket Text:

Attorney Vikram Deivanayagam terminated as to Harold Archie Lindsay, III., Attorney John Richard Donahue for Harold Archie Lindsay, III added. (jgb)

6:16-cr-00143-RP-1 Notice has been electronically mailed to:

Christopher Michael Blanton chris.blanton@usdoj.gov,
brenda.wright@usdoj.gov, usatxw.ecfwa@usdoj.gov

John Richard Donahue texascriminalattorney@yahoo.com

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4/21/2017

Print

Subject: Re: Harold Lindsay
From: John Donahue (texascriminalattorney@yahoo.com)
To: Kristie_Davis@ [REDACTED]
Date: Friday, January 6, 2017 11:27 AM

So now you're a floater?

Sent from Yahoo Mail on Android

On Fri, Jan 6, 2017 at 10:12 AM, Kristie_Davis@ [REDACTED]
<Kristie_Davis@ [REDACTED]> wrote:

I'm in Austin today and will be in Del Rio for the rest of the month. You have to initiate a CJA 24 evoucher for me first and then order the transcripts. I'll have to look at my journal when I get back to Waco which will be sometime this weekend. I'll shoot you an email then.

Thanks.

-----John Donahue <texascriminalattorney@yahoo.com> wrote: -----

To: Kristie Davis <kristie_davis@ [REDACTED]>
From: John Donahue <texascriminalattorney@yahoo.com>
Date: 01/04/2017 04:53PM
Subject: Harold Lindsay

I just realized that I was appointed on an appeal on Harold Lindsay. He pleaded guilty to Judge Manske on October 4 and was sentenced by Judge Pitman on December 14. Were you involved in either of those? Also, could I call you for an explanation again on how to order transcripts?

There was also a suppression motion held on August 4 by Judge Manske.

Thanks,
John Donahue